

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

Council for Aid to Education, Inc.,
Debtor-in-Possession

Chapter 11 (Sub-V)

Case No. 21-11221

**DECLARATION OF ROBERT YAYAC PURSUANT TO LOCAL BANKRUPTCY
RULES 1007-2 AND 9077-1 IN SUPPORT OF CHAPTER 11 FILING AND HEARING
ON SHORTENED NOTICE FOR DEBTOR'S FIRST DAY MOTION**

Pursuant to 28 U.S.C. § 1746, I, Robert Yayac, declare ("Declaration") under penalty of perjury that the following is true to the best of my knowledge, information and belief:

1. I am the President and Chief Executive Officer ("CEO") of the above referenced debtor, Council for Aid to Education, Inc. (the "Company" or the "Debtor"), a nonprofit corporation incorporated under the laws of the state of Delaware and headquartered at 1732 1st Ave #21535 New York, New York. In my capacity as CEO, I am generally familiar with the Debtor's day-to-day operations, business and financial affairs, and books and records. I have served as CEO for Debtor for a total of 1 year and 10 months. I have over 10 years of experience in the educational assessments field. Prior to becoming CEO for the Debtor, for more than 9 and 1/2 years I served as CEO and Co-Founder of Kynectiv, Inc. I received a Master of Business Administration degree from The Wharton School in 1989 and a completed the Wharton Executive Education, Global Market Management course from The Wharton School in 2000.

2. I am over the age of eighteen (18) and am authorized by the Debtor to submit this Declaration. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with other members of the Debtor's management team, the Debtor's employees or the Debtor's advisors, my review of the relevant documents and

information concerning the Debtor's operations, financial affairs and restructuring initiatives, or my opinions based upon my experience and knowledge. If called as a witness, I could and would competently testify to the facts set forth in this Declaration.

3. I am generally familiar with the Debtor's day-to-day operations, business affairs, books and records, as well as the Debtor's restructuring efforts. I submit this Declaration (a) to assist the Court and all parties in interest in understanding, among other things, the Debtor's operations, its corporate structure, and the circumstances that led to the commencement of this chapter 11 case and (b) in support of the Debtor's petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") filed on June 30, 2021 (the "Petition Date") and the relief that the Debtor requests from the Court pursuant to the motion described in this Declaration (collectively, the "First Day Motion").

4. To familiarize the Court with the Debtor and the relief sought in the First Day Motion filed in this chapter 11 case, this Declaration is organized into five parts as follows:

- a. Part I provides an introduction to the Debtor and information on its history, corporate structure and business operations;
- b. Part II provides an overview of the Debtor's capital structure;
- c. Part III provides a description of the circumstances leading to the commencement of this chapter 11 case, including a description of the Debtor's prepetition solicitation and restructuring efforts;
- d. Part IV provides an overview of Debtor's creditors and post-Petition operations; and
- e. Part V provides an overview of the relief requested in the First Day Motion and sets forth the relevant facts in support of such motion.

I. DESCRIPTION OF THE DEBTOR'S HISTORY, CORPORATE STRUCTURE AND BUSINESS OPERATIONS

A. The Corporate History and Corporate Structure of the Debtor

5. Debtor is a nonprofit organization whose mission is to improve student outcomes. Debtor's performance-based and custom assessments authentically measure students' essential college and career readiness skills and identify opportunities for student growth. Debtor designs certain assessments and researches the validity, reliability, and predictability of its assessments, providing educators with actionable insights to support student growth and development.

6. Debtor was incorporated in the State of Delaware on December 7, 2007, as a nonprofit corporation organized for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code including for the following:

- a. conducting educational policy research and disseminating information about education policy issues to agencies, institutions and the public at large;
- b. developing educational assessments that validly and reliably measure learning and enhance educational performance, and provide assessment and related diagnostic and analytical services to educational institutions and students to help promote teaching and learning of critical thinking, analytical reasoning, problem-solving, written communications and other skill; and
- c. providing information and analysis to the public at large and to educational institutions that will promote public and corporate financial support of education.

7. Pursuant to Debtor's Articles of Incorporation, as amended, the current members of the Debtor's Board of Directors ("Board") are Robert Yayac (Pres. & CEO); Michael D. Rich (Chairman); Eduardo J. Marti; Dennis Brown; Michael Feuer; Judith Eaton; and Diane Ferguson. The current Officers of the Debtor are myself serving as CEO and Ingmar Berg who serves as

Chief Financial Officer (“CFO”). Ingmar Berg has served as CFO since September, 2019.

Ingmar Berg and I have been and will continue to be independent consultants to the Debtor under our current contracts. We receive annual IRS form 1099 statements from the Debtor.

B. Products and Business Operations of the Debtor

8. As set forth above, Debtor is a nonprofit corporation engaged in designing assessments to measure the potential success of students in college and beyond, and in testing the validity and reliability of their assessments. To this end, Debtor has developed the following assessments: College and Career Readiness Assessment (CCRA+); Collegiate Learning Assessment (CLA+); and Success Skills Assessments (SSA+).

9. Debtor provides standard and custom reports following its assessments that provide insight into student strengths and identifies areas of improvement, helping educators understand student potential in support student growth and development.

10. Debtor generates revenue by selling its assessments to secondary and higher education institutions internationally. Institutions contract for the assessments and related services. In addition, Debtor provides custom assessment services to certain government entities directly and as a subcontractor.

11. The Debtor’s books and records are located online via a variety of cloud-based applications including Quickbooks Online, DropBox, Bill.com, and Microsoft Office 365.

II. THE DEBTOR’S CAPITAL STRUCTURE

12. As of the Petition Date, Debtor has total assets of approximately \$2,506,000. The majority of Debtor’s assets relate to accounts receivable (\$2,410,000) and cash (\$96,000). The Company’s current liabilities total approximately \$1,445,471 as of Petition Date. Debtor has one secured creditor, Citibank, N.A. (“Citibank”) with respect to a now-closed \$500,000 line of revolving credit with a principal balance of \$478,097.85 and accrued interest of \$1,195.65.

13. Debtor's other major liabilities include a PPP loan from Citibank in the amount of \$259,672.16 and an office lease claim of \$523,189.08.

14. Debtor also owes approximately \$186,350 in accounts payable to, among others, vendors, suppliers, trade creditors, utilities, and former employees.

15. Wages and other related payments for current employees and contractors are paid in full for work performed through June 30, 2021.

III. THE EVENTS LEADING TO THE COMMENCEMENT OF THESE CHAPTER 11 CASES

A. Pre-COVID-19 Turn Around Efforts

16. The revenue of the Debtor had been declining for many years. The Debtor sold a key asset to provide capital to continue operations in June 2018 for \$1,600,000. In October 2019, a restructuring plan was developed. Revenue growth and expense reductions were immediately targeted. This plan was underway when COVID-19 interrupted the business operations.

B. Loss of Revenue Due related to Covid-19

17. Due to school closings and the implementation of remote learning, during the 12 months period ending May 2021, compared to prior year period 12 months period ending in May 2020, Debtor's revenue dropped by 40% from \$5M to \$3M severely impacting Debtor's operations.

C. Landlord's Pending Lawsuit and Motion for Summary Judgment

18. Debtor leases approximately 8,117 square feet of office space, comprising of the entire 16th floor of an office building commonly known as 215 Lexington Ave., New York, NY pursuant to a certain real estate lease agreement that was entered into between the Debtor and its landlord, 215 Dorchester Partners LLC ("Landlord") on or around January 2012 ("Lease") and provided for a term of ten (10) years and six (6) months from the Commencement Date of

August 10, 2012. The current monthly rent (including common area maintenance and other charges) under the Lease approximates around \$35,000 per month for the duration of the term. Debtor last made a payment to the landlord under the Lease on March 3, 2020, and estimates that the current Lease arrearage totals \$523,189.08.

19. After Debtor was unsuccessful in attempting to negotiate a surrender of the Lease with Landlord, on October 5, 2020, Landlord filed its three-count complaint in the Supreme Court of the State of New York, County of New York, Case No. 654969/2020, titled *215 Dorchester Partners, LLC v. The Council for Aid to Education, Inc.*, against Debtor for breach of contract, continuing damages, and reasonable attorneys' fees for past due rent owed under the Lease. Debtor filed an answer on December 28, 2020. Despite the best efforts of Debtor and Debtor's counsel, Debtor was unable to negotiate a consensual resolution of the lawsuit. On January 21, 2021, Landlord filed a motion for summary judgment seeking \$380,529.13 for unpaid rent and additional unpaid rent and \$11,816.25 in attorneys' fees. Debtor filed a memorandum of law in opposition to the Landlord's motion for summary judgment on February 11, 2021, and the Landlord subsequently filed a memorandum of law in reply on February 15, 2021. The matter was fully briefed but not yet decided before the filing of the Debtor's bankruptcy petition.

IV. CREDITORS AND POST-PETITION OPERATIONS

20. No committee of creditors was formed prior to filing this bankruptcy case.
21. The holders of the 20 largest unsecured claims are as follows:

Name and Address of Unsecured Creditor	Nature of Claim	Unsecured Claim Amount
215 Dorchester Partners, LLC 215 Lexington Avenue 16th Floor New York, NY 10016	Commercial Real Estate Lease	\$523,189.08
Citibank Client Services Attn: C.P.S. PO Box 769007 San Antonio, TX 78245-9966	PPP Loan	\$259,672.16
Con Edison JAF Station PO Box 1702 New York, NY 10016-1702	Utility	\$1,378.32
Dynalink Communications, Inc. PO Box 3415 Church Street Station New York, NY 10008	Utility	\$15,406.85
Michele Oberly 205 West 88th Street Apt. 7E New York, NY 10024	Severance	\$16,147.50
WLCE 171 Executive Drive New Hyde Park, NY 11040	Vendor	\$150,025.00
	TOTAL	\$965,818.91

22. A copy of Debtor's 13-week cash flow projections is attached as **Exhibit A**.

A. Debtor's Estimated Employee Wages

23. As of the Petition Date, the Debtor has eleven (11) full time employees and eleven (11) part time/temporary employees (collectively, the "Employees"). Debtor estimates that will pay approximately \$60,000 over the next 30 days for salary, benefits, payroll tax, 401(k) matching and other fees. The Employees' skill, knowledge, and understanding with respect to the Debtor's operations, customer relations, and infrastructure are essential to maintaining the Debtor's business operations and will be equally essential during this chapter 11

case. Moreover, just as the Debtor depends on the Employees to operate its business, those individuals also depend on the Debtor.

24. In the ordinary course of business, the Debtor pays its Employees on a bi-monthly basis, on a current basis, on the 15th and last day of each month and are currently paid for compensate earned through and including June 30, 2021. Employees are salaried or paid hourly. The Debtor's first post-Petition scheduled payroll date is July 15, 2021, which will compensate Employees solely for post-Petition services. The Debtor utilizes the services of TriNet Group, Inc. ("TriNet"), a third-party payroll administrator, to process its payroll and coordinate the remittance of withholding taxes and other obligations (as defined below). From its Citibank account described above, the Debtor remits a lump sum payment into an account specified by TriNet, which TriNet then uses to fund payroll.

25. In the ordinary course of business, the Debtor maintains various employment benefit plans and policies, including, without limitation, medical plans, dental plans, vision plans, life insurance plans, short term and long term disability plans, as described in the Employee Motion. Employees who work thirty (30) hours per week are eligible for all company-sponsored benefits. Employees that work less than thirty (30) hours per week are not eligible for all company sponsored benefits.

B. Debtor's Costs for Outside Contractors

26. The Debtor also employees approximately forty (40) outside contractors ("Contractors") who are individuals. These contractors provide a range of services for CAE including designing and developing our assessments and supporting our work for custom assessment development. The estimated expense for Contractors for the next thirty (30) days is one hundred thousand dollars (\$100,000).

C. Debtor's Officer Compensation

27. As CEO and President, I am compensated through a monthly retainer in the amount of thirty thousand eight hundred dollars (\$30,800) invoiced on the first of each month and paid within ten (10) days. As CFO, Ingmar Berg is compensated at an hourly rate of one hundred and fifty dollars (\$150) per hour. Ingmar Berg submits an invoice on the 15th and last day of the month and is paid within fifteen (15) days. The estimated compensation for the next thirty (30) days is forty thousand dollars (\$40,000).

V. OVERVIEW OF FIRST DAY RELIEF - CASH COLLATERAL

28. Contemporaneously with this Declaration, the Debtor has filed or expects to file a motion (the "First Day Motion") seeking an order authorizing use of cash collateral to stabilize the Debtor's business, facilitate the efficient administration of this chapter 11 case, and facilitate a successful reorganization of the Debtor. I believe that this Court's approval of the relief requested in the First Day Motion is essential to avoid immediate and irreparable harm to the Debtor and its estate, to provide the Debtor with an opportunity to continue to meet its obligations in the ordinary course of business, to provide for a smooth transition into chapter 11 and to provide for the efficient and swift administration of this chapter 11 case. A description of the relief requested, and the facts supporting the First Day Motion, is briefly set forth below:

A. Motion of the Debtor for Entry of Interim and Final Order Authorizing the Debtor to Use Cash Collateral.

29. Debtor seeks a hearing on shortened notice on its Motion for Order Authorizing the Debtor to (a) Utilize Cash Collateral, (b) Grant Adequate Protection and (c) Schedule a Final Hearing on Use of Cash Collateral ("Cash Collateral Motion"). As set forth in the Cash Collateral Motion, Citibank is the secured lender for a now-closed line of credit in the amount of \$500,000. The current principal balance owed to Citibank as of the Petition Date is \$478,097.85

with accrued interest of \$1,195.65. The loan is secured by, inter alia, all cash and accounts receivable of the Debtor. As set for the above, the current cash on hand of the petition date is approximately \$96,000 and the current accounts receivable total \$2,410,000. Therefore, Citibank appears to be fully secured. The proposed budget for use of cash collateral for the next 13 weeks is attached hereto as Exhibit A.

30. I believe that use of cash collateral is critical to maintaining Debtor's ongoing business operating and Debtor's restructuring. More specifically, I believe that absent the payment of the employee compensation and benefits owed to them, many of Debtor's Employees and Contractors would abandon the Company, which would hinder the Debtor's ability to consummate a plan and will devalue the Debtor's estate and increase instability during this critical time. Furthermore, Debtor requires use of cash collateral to pay vendors and other ordinary course expenses necessary for ordinary course operations. Therefore, I respectfully submit that the relief requested in the Cash Collateral Motion is a necessary and critical element of the Debtor's efforts and its reorganization.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 30, 2021

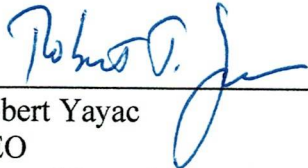
By: 
Robert Yayac
CEO
Council For Aid To Education, Inc.

Exhibit A

13 Week Cash Forecast

Week-ending:	7/4/2021	7/11/2021	7/18/2021	7/25/2021	8/1/2021	8/8/2021	8/15/2021	8/22/2021	8/29/2021	9/5/2021	9/12/2021	9/19/2021	9/26/2021
DIRECT CASH FLOW													
BEGINNING CASH BALANCE	241,770	84,615	84,615	435,834	423,834	704,555	668,555	2,113,282	2,108,907	1,909,725	1,973,892	1,817,597	1,646,697
<i>Cash Inflows From Operations</i>													
A/R Receipts	-	-	444,295	-	75,265	-	-	-	-	-	-	-	-
Projected A/R receipts	-	-	-	-	354,997	-	1,581,122	-	24,000	66,667	-	-	-
Total Cash Inflows From Operations	-	-	444,295	-	430,262	-	1,581,122	-	24,000	66,667	-	-	-
<i>Total Cash Inflows From Operations</i>													
Payroll	58,858	-	56,920	-	56,920	-	62,184	-	62,184	-	62,415	-	62,415
AP DISBURSEMENTS	98,297	-	-	-	-	-	-	-	-	-	-	150,025	-
Repay Citi LOC	-	-	-	-	-	-	-	1,875	-	-	-	1,875	-
PROJECTED AP PAYMENTS	-	-	36,157	12,000	92,621	36,000	74,211	2,500	160,998	2,500	93,881	19,000	81,534
Total Cash Outflows From Operations	157,155	-	93,077	12,000	149,541	36,000	136,395	4,375	223,182	2,500	156,295	170,900	143,948
<i>Cash Flow From Operations</i>	(157,155)	-	351,219	(12,000)	280,721	(36,000)	1,444,727	(4,375)	(199,182)	64,167	(156,295)	(170,900)	(143,948)
Investments/debt													
TOTAL ENDING CASH BALANCE	84,615	84,615	435,834	423,834	704,555	668,555	2,113,282	2,108,907	1,909,725	1,973,892	1,817,597	1,646,697	1,502,749
Cash Collateral (Cash + AR)	2,494,160	2,494,160	2,471,218	2,459,218	2,528,614	2,492,614	2,356,219	2,351,844	2,128,662	2,228,954	2,072,659	1,957,759	1,813,811
<i>Accounts Receivable</i>													
AR Beginning Balance	\$ 519,560	\$ 2,409,545	\$ 2,409,545	\$ 2,035,384	\$ 2,035,384	\$ 1,824,059	\$ 1,824,059	\$ 242,937	\$ 242,937	\$ 218,937	\$ 255,062	\$ 255,062	\$ 311,062
Plus: Sales (booked)	1,865,984	-	-	-	66,667	-	-	-	-	66,667	-	-	-
Plus: Sales (pipeline - high probability)	24,000	-	70,135	-	152,270	-	-	-	-	36,125	-	56,000	-
Less: Receipts Current Receivables	-	-	(444,295)	-	(75,265)	-	-	-	-	-	-	-	-
Less: Receipts - Projected Billings (bookings)	-	-	-	-	(354,997)	-	(1,510,987)	-	-	(66,667)	-	-	-
Less: Receipts - Projected Billings (high probability)	-	-	-	-	-	-	(70,135)	-	(24,000)	-	-	-	-
AR Ending Balance	\$ 2,409,545	\$ 2,409,545	\$ 2,035,384	\$ 2,035,384	\$ 1,824,059	\$ 1,824,059	\$ 242,937	\$ 242,937	\$ 218,937	\$ 255,062	\$ 255,062	\$ 311,062	\$ 311,062
<i>Accounts Payable</i>													
AP Beginning Balance	\$ 810,036	\$ 790,306	\$ 798,306	\$ 823,861	\$ 811,861	\$ 932,317	\$ 896,317	\$ 882,737	\$ 880,237	\$ 772,370	\$ 1,116,013	\$ 1,103,666	\$ 942,141
Plus: Purchases (COGS)	\$ 5,357	\$ 8,000	\$ 50,211	\$ -	\$ 97,793	\$ -	\$ 50,631	\$ -	\$ 50,631	\$ 236,285	\$ 79,034	\$ -	\$ 79,034
Plus: Purchases (S&M)	12,000	-	7,500	-	25,200	-	7,500	-	-	24,000	-	7,500	-
Plus: Purchases (G&A)	61,210	-	4,000	-	90,085	-	2,500	-	2,500	85,857	2,500	-	2,500
Less: Current AP	(98,297)	-	-	-	-	-	-	-	-	-	-	(150,025)	-
Less: Projected AP Payments (COGS)	-	-	(5,357)	(8,000)	(50,211)	-	(62,711)	-	(85,713)	-	(55,581)	(12,500)	(79,034)
Less: Projected AP Payments (S&M)	-	-	-	-	(12,000)	(1,200)	(11,500)	-	(20,000)	-	(7,500)	(4,000)	-
Less: Projected AP Payments (G&A)	-	-	(30,800)	(4,000)	(30,410)	(34,800)	-	(2,500)	(55,285)	(2,500)	(30,800)	(2,500)	(2,500)
AP Ending Balance	\$ 790,306	\$ 798,306	\$ 823,861	\$ 811,861	\$ 932,317	\$ 896,317	\$ 882,737	\$ 880,237	\$ 772,370	\$ 1,116,013	\$ 1,103,666	\$ 942,141	\$ 942,141